

hesitated to conclude that First Amendment claims are not ripe for adjudication. *See, e.g., Murphy v. New Milford Zoning Commission*, 402 F.3d 342 (2d Cir. 2005); *Thomas v. Anchorage Equal Rights Commission*, 220 F.3d 1134 (9th Cir. 2000) (en banc).

There is no conflict here. There is only a fact-specific, prudentially-based decision that National Advertising's rush to the courthouse did not present a ripe dispute for the federal courts. There is no reason for the Court to grant the writ.

II.

The circuit court dismissed National Advertising's lawsuit based on lack of ripeness, not based on the failure to exhaust administrative remedies, and there can thus be no conflict on the issue of the exhaustion of administrative remedies

National Advertising also claims conflict on the issue of exhaustion of administrative remedies. It claims that the circuit court "insist[ed] that National exhaust administrative remedies before pursuing a facial challenge to the City's Sign Code." (Petition, at 15).

National Advertising has confused the ripeness requirement (present in all cases) and the principle that a party must exhaust administrative remedies (which applies in some but not all cases). *See Williamson Planning Comm'n v. Hamilton Bank*, 473 U.S. 172, 192 (1985) ("[T]he question whether administrative remedies must be exhausted is conceptually distinct . . . from the question whether an administrative action must be final before it is judicially reviewable."); *Peachlum v. City of York*, 333 F.3d 429, 436

(3d Cir. 2003) ("ripeness is not to be confused with exhaustion."). Where a party suffers a concrete injury prior to final administrative disposition, the claim may be ripe, even if all administrative remedies have not been exhausted. *Peachlum v. City of York*, 333 F.3d at 437; *Digital Properties v. City of Plantation*, 121 F.3d 586, 591 n.4 (11th Cir. 1997).

Here, the circuit court did *not* hold that National Advertising had to exhaust all administrative remedies. It merely held that National Advertising had not done enough to demonstrate that its dispute is ripe for adjudication: "Because National never obtained an official rejection of its permit applications, we find that it failed to present the district court with a ripe case." (App. 6). National Advertising didn't need to exhaust all of its possible remedies to have a ripe dispute. But it at least had to get a final adjudication on the *first* step of the way, which required a ruling by the head of the Building and Zoning Department.

Contrary to National Advertising's assertion, the circuit court did not impose an exhaustion of administrative remedies requirement. There is no conflict on this point, and no reason to grant the writ.

CONCLUSION

The petition for certiorari should be denied.

Respectfully submitted,

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